

June 20, 2000

Colonel Leo W. Haseman, Director  
Division of Enforcement  
MN Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4047

RE: In the Matter of the Appeal of the Trespass Citation Issued to Keith  
Patrick Tschida; Trespass Civil Citation #15648; OAH Docket No. 11-  
2000-12829-2

Dear Colonel Haseman:

On June 13, 2000, a prehearing conference was held in this matter. Participating in the telephone conference call were Keith Tschida, Conservation Officer Jason Jensen, and the undersigned Administrative Law Judge. After discussing the facts and circumstances surrounding this matter, it was agreed that no formal hearing would be needed and that I could decide the matter based upon the discussion during the prehearing conference. I have reviewed the facts and the law and recommend that the citation be AFFIRMED.

In late February, 2000, Mr. Tschida and a group of other snowmobilers left a snowmobile trail and traveled across an alfalfa field owned by a private landowner. The landowner obtained the registration numbers of the snowmobiles, one of which belonged to Mr. Tschida. The landowner gave Conservation Officer Jason Jensen the registration numbers. Mr. Jensen traced the registrations and issued three civil citations, including one to Mr. Tschida. The alfalfa field was posted with some signs indicating that no snowmobiling was allowed, but Mr. Jensen acknowledged that the signs might have been hard to see and did not contend that they were posted as frequently as required by statute. However, the field was an agricultural field. Minn. Stat. § 97B.001, subd. 2, specifies that, with certain exceptions not relevant here, "a person may not enter agricultural land for outdoor recreation purposes, without first obtaining permission of the owner, occupant, or lessee." Accordingly, it was not necessary for the land to be posted.

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Mr. Tschida was not familiar with the area and does not recall seeing any "no snowmobiling" signs. He agreed that it was possible that he traveled on the field at issue, but stressed that it was inadvertent and he was following other snowmobile tracks. He submitted a letter after receiving the citation in which he apologized to the DNR officers and the farmer, indicated that he used to live on a farm and would never intentionally travel on an agricultural field, and emphasized that he was not aware that he had left the trail and gone into the field. Mr. Jensen recommended that the citation stand rather than issuing a warning, since crop damage can result from the snowmobile traffic. Accordingly, the matter could not be resolved at the prehearing conference and it was agreed that I could decide the matter based upon the discussion during the conference call.

Based upon the testimony, it appears that the land at issue was "agricultural land" within the meaning of Minn. Stat. § 97B.001, subd. 1, and that Mr. Tschida inadvertently drove his snowmobile off the approved trail onto the land without first obtaining permission. Winter sports such as snowmobiling are included within the definition of "outdoor recreation" within the meaning of Minn. Stat. § 97B.001, subd. 1a. The statute does not require that trespass be intentional in order for a civil citation to issue. Those using recreational vehicles are responsible for ensuring that they do not trespass on agricultural land. Accordingly, Mr. Tschida was in violation of Minn. Stat. § 97B.001, subd. 2, when he entered upon the agricultural land without first obtaining permission. The Conservation Officer has the discretion to decide to issue a written citation rather than a verbal warning. The citation issued to Mr. Tschida was, therefore, validly issued.

The law provides that the final decision in this matter must be made by the Commissioner (or his designee). The law further requires that the Commissioner must wait at least five (5) days after receipt of this recommendation before he makes the final decision. Mr. Tschida may, during that five (5) day period, comment to the Commissioner on this recommendation, and the Commissioner must consider the comments. Once the Commissioner has made his final decision in this matter, a copy of that decision must be served upon Mr. Tschida and the Administrative Law Judge.

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I am closing our file in this matter and returning the record to you.

Respectfully submitted,

BARBARA L. NEILSON  
Administrative Law Judge  
Telephone: 612/341-7604

cc: Keith Tschida  
Jason Jensen